

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 16 through March 22, 2007

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

ARONS, &c. v. JUTKOWITZ, et al.:
2ND Dept. App. Div. order of 12/5/06; modification; leave to appeal granted by App. Div., 3/8/07;
DISCLOSURE - EX PARTE INTERVIEWS WITH NON-PARTY TREATING PHYSICIANS BY DEFENSE COUNSEL IN MEDICAL MALPRACTICE AND WRONGFUL DEATH ACTION - CPLR ARTICLE 31 - FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (42 USC § 1320d) - WHETHER PLAINTIFF MAY BE REQUIRED TO EXECUTE AUTHORIZATIONS PERMITTING DEFENSE COUNSEL TO SPEAK INFORMALLY WITH TREATING PHYSICIANS - WHETHER DEFENSE COUNSEL MAY BE REQUIRED TO DISCLOSE WRITTEN MATERIALS FROM INTERVIEWS WITH TREATING PHYSICIANS;
Supreme Court, Richmond County granted defendants' motion for an order directing plaintiff to provide authorizations permitting defense counsel to speak with decedent's treating physicians, directed plaintiff to provide such authorizations, directed defendants to provide plaintiff with written materials obtained from the interviewed health care providers, and denied plaintiff's cross motion to strike defendant Fulop's answer or to preclude testimony by defendant Fulop due to alleged spoliation of evidence; App. Div. modified by deleting the provisions granting defendants' motion for an order directing plaintiff to

execute authorizations permitting defense counsel to speak with certain physicians who rendered care to plaintiff's decedent relating to claims made in the action, and substituting therefor a provision denying the motion with leave to move pursuant to 22 NYCRR 202.21(d) for permission to conduct additional pretrial discovery relating to decedent's treating physicians as limited by CPLR article 31.

CELLAMARE v. LAKEMAN, MATTER OF:

2ND Dept. App. Div. order of 1/30/07; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal as of right;
PARENT AND CHILD - SUPPORT - EMANCIPATION OF CHILD - PROCEEDING PURSUANT TO FAMILY COURT ACT ARTICLE 4 TO TERMINATE AN ORDER OF CHILD SUPPORT - WHETHER SUFFICIENT EVIDENCE SUPPORTED FAMILY COURT'S DETERMINATION THAT CHILD WAS NOT EMANCIPATED;
Family Court, Richmond County denied petitioner mother's objections to an order of Family Court, Richmond County, dated 11/23/05 which, after a hearing, dismissed the petition; App. Div. affirmed.

CELLAMARE v. LAKEMAN, MATTER OF:

2ND Dept. App. Div. order of 1/30/07; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal as of right;
PARENT AND CHILD - SUPPORT - PROCEEDING PURSUANT TO FAMILY COURT ACT ARTICLE 4 TO RECOVER CHILD SUPPORT ARREARS - WHETHER MOTHER'S REQUEST FOR ARREARS WAS BARRED BY THE LAW OF THE CASE; WHETHER PARENT'S DUTY TO SUPPORT CHILD UNTIL CHILD REACHES THE AGE OF 21 IS A MATTER OF FUNDAMENTAL PUBLIC POLICY THAT CANNOT BE ABROGATED BY CONTRACT;
Family Court, Richmond County denied petitioner mother's objections to an order of Family Court, Richmond County, dated 10/12/05 which, after a hearing, granted the respondent father's cross motion to dismiss the petition and dismissed the petition; App. Div. affirmed.

FLEMING et al. v. GRAHAM, et al.:

2ND Dept. App. Div. order of 11/14/06; affirmance; leave to appeal granted by App. Div., 3/1/07; Rule 500.11 review pending;
WORKERS' COMPENSATION LAW - INJURIES ARISING IN COURSE OF EMPLOYMENT - "PERMANENT AND SEVERE FACIAL DISFIGUREMENT" (WORKERS' COMPENSATION LAW § 11) - AUTOMOBILE ACCIDENT IN EMPLOYER'S VEHICLE; SUMMARY JUDGMENT - WHETHER ISSUES OF FACT EXISTED REGARDING PLAINTIFF'S FACIAL SCARRING AS A SEVERE AND PERMANENT FACIAL DISFIGUREMENT;

Supreme Court, Kings County denied third-party defendant Pinstripes Garment Service, LLC's motion for summary judgment dismissing the third-party complaint and denied plaintiff Fleming's cross motion for summary judgment; App. Div. affirmed.

GREENE (TEMEL), PEOPLE v.:

1ST Dept. App. Div. order of 11/9/06; affirmance; leave to appeal granted by Ciparick, J., 3/12/07;

CRIMES AND CRIMINAL PROCEDURE - EXCLUSIONARY RULE - VIOLATION OF PHYSICIAN-PATIENT PRIVILEGE - WHETHER INFORMATION A HOSPITAL ADMINISTRATOR PROVIDED TO POLICE CONCERNING DEFENDANT'S TREATMENT FOR A FACIAL WOUND VIOLATED DEFENDANT'S PHYSICIAN-PATIENT PRIVILEGE (CPLR 4504); WHETHER ALLEGED VIOLATION OF STATUTORY PHYSICIAN-PATIENT PRIVILEGE IMPLICATES A CONSTITUTIONALLY PROTECTED RIGHT WARRANTING SUPPRESSION; HARMLESS AND PREJUDICIAL ERROR - WHETHER ANY ERROR IN THE ADMISSION OF HOSPITAL'S INFORMATION WAS HARMLESS; IDENTIFICATION OF DEFENDANT - PHOTOGRAPHIC ARRAYS - ALLEGEDLY TAINTED IDENTIFICATION OF DEFENDANT;

Supreme Court, Bronx County judgment convicted defendant, after a jury trial, of manslaughter in the second degree, and imposed sentence; App. Div. affirmed.

HILL (ANTHONY), PEOPLE v.:

1ST Dept. App. Div. order of 1/30/07; affirmance with dissents; leave to appeal granted by Marlow, J., 3/13/07;

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WHETHER TRIAL COURT'S FAILURE TO ADVISE DEFENDANT OF POST-RELEASE SUPERVISION RENDERED HIS PLEA UNKNOWING AND INVOLUNTARY UNDER PEOPLE v CATU (4 NY3d 242 [2005]) AND PEOPLE v VAN DEUSEN (7 NY3d 744 [2006]) ENTITLING HIM TO VACATUR OF HIS PLEA; WHETHER TRIAL COURT ACTED PROPERLY IN MODIFYING DEFENDANT'S SENTENCE SO THAT THE JAIL TIME AND MANDATORY POST-RELEASE SUPERVISION PERIOD COMBINED TO EQUAL THE PROMISED SENTENCE UNDER THE ORIGINAL PLEA AGREEMENT;

Supreme Court, New York County denied defendant's CPL 440.10 motion to vacate the prior judgment of conviction, and modified his sentence to be more lenient than the original sentence; App. Div. affirmed.

LAUNDERS, &c. v. STEINBERG, et al.:

1ST Dept. App. Div. order of 1/16/07; affirmance with dissents; DAMAGES - MEASURE OF DAMAGES - COMPENSATORY AND PUNITIVE DAMAGES AWARDED AGAINST FATHER CONVICTED OF MANSLAUGHTER IN THE FIRST DEGREE FOR THE DEATH OF HIS DAUGHTER - PAIN AND SUFFERING AWARD FOR CHILD'S EIGHT HOUR SUFFERING BEFORE DEATH - PAIN AND SUFFERING AWARD FOR CHILD'S PRIOR SUFFERING AS A BATTERED CHILD - PUNITIVE DAMAGE AWARD; COLLATERAL ESTOPPEL;

Supreme Court, New York County awarded plaintiff recovery against defendant in the principal sum of \$15 million; App. Div. affirmed.

SMALLS v. AJI INDUSTRIES, INC., et al.:

1ST Dept. App. Div. order of 2/22/07; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution; JUDGMENTS - SUMMARY JUDGMENT - LIABILITY OF CORPORATE DEFENDANTS IN MOTOR VEHICLE ACCIDENT OCCURRING WHEN DRIVER TURNED LEFT AT THIRTY-FIVE TO FORTY MILES AN HOUR, SKIDDED ON WET PAVEMENT, AND HIT A REFUSE CONTAINER, OWNED BY CORPORATE DEFENDANTS, PARKED ON SIDE OF THE ROAD;

Supreme Court, Bronx County denied the summary judgment motion by defendants AJI Industries, Inc., Eastern Ecology Services, Inc. and Industrial Ecology Service, Inc. (AJI) defendants seeking to dismiss the complaint as to them; App. Div. reversed by granting the summary judgment motion of AJI, and dismissing the complaint as against them.

WEBB v. NEW YORK METHODIST HOSPITAL, et al.:

2ND Dept. App. Div. order of 12/5/06; reversal; leave to appeal granted by App. Div., 3/13/07;

DISCLOSURE - EX PARTE INTERVIEWS WITH NON-PARTY TREATING PHYSICIANS BY DEFENSE COUNSEL IN MEDICAL MALPRACTICE ACTION - CPLR ARTICLE 31 - FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (42 USC § 1320d) - WHETHER PLAINTIFF MAY BE REQUIRED TO EXECUTE AUTHORIZATIONS PERMITTING DEFENSE COUNSEL TO CONDUCT POST-NOTE OF ISSUE EX PARTE INTERVIEWS WITH TREATING PHYSICIANS;

Supreme Court, Kings County granted defendants' motion compelling plaintiff to execute authorizations pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) which would allow defendants to conduct post-note of issue ex parte interviews with treating physicians; App. Div. reversed.

